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FAX COVER SHEET

DATE: November 6, 1997

TO:

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FROM

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Instruction/Comments:

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Chevron

November 6, 1997

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ORIGINAL TO FOLLOW BY REGULAR MAIL

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DESIGNATION OF PAYOR RECORDKEEPING;
INTERIM FINAL RULEMAKING;
62 FED REG 42062 (AUGUST 5, 1997)

Dear Sir:

Chevron U.S.A. Production Company, a division of Chevron U.S.A. Inc. ("Chevron"), appreciates the opportunity to comment on the subject interim final rulemaking. As one of the largest payors of royalties on production from federal leases, Chevron is significantly affected by the interim final rulemaking. These comments supplement those made on Chevron's behalf by Gardere & Wynne.

This interim final rulemaking is overly broad and administratively burdensome. The Federal Oil and Gas Royalty Simplification and Fairness Act ("FOGRSFA") specifically requires reports (as "designations") linking payors and lessees to be submitted by lessees, not payors. Yet §210.55 requires payors to provide extensive information about the lessees on whose behalf they intend to make payments. This provision not only creates unnecessary duplication of information already in the hands of the government, it imposes an enormous new reporting liability on payors whom congress specifically intended to relieve from royalty payment liability. Further, the estimates used by MMS in order to obtain OMB Control Number 1010-0107 for information collection purposes have been severely understated by MMS, 30,000 burden hours. In addition, an OMB Control Number should be denied on the grounds that MMS cannot demonstrate a valid use for the information collected from payors. For example, §210.55(b)(6)(iii) requires a copy of the written designation. 62 Fed. Reg. 42066. However, MMS rationalizes that its reason for requiring payors to assume this reporting burden is so "that MMS [may] assist [lessees] to comply with RSFA's mandate that they designate a Designee." 62 Fed. Reg. 42064. How can a rule be

reasonable if it requires a written designation to pre-exist the payor's report, if the only purpose of the payors report is to ultimately obtain a designation from the ~~Designee~~? Lessee

In §218.52 MMS requires the lessee's notification of designation to include such information as the AID number, the Designee's TIN, percentage of record title or operating rights ownership, and a copy of the written designation. 62 Fed. Reg. 42066-42067. The lessee, who is not the payor, will not know the revenue source, so the lessee will not know the AID number. The lessee has no reason or need to know the payor's TIN number. Ownership percentages change constantly, and requiring designations to reflect them will result in almost perpetually outdated designations. Most important, how can a designation notice be reasonably required to contain "a copy of the written designation"? What is a notice of designation if not "the written designation"?

This interim final rule should be withdrawn. It goes far beyond the statutory requirements of FOGRSFA. It creates a "Catch 22" environment in which a lessee cannot designate a Designee without information such as the revenue source, which can only be obtained by a Designee after having filed a Payor Information Form MMS-4025. The Designee is required to report information (collected by MMS purportedly for the purpose of enabling lessees to designate Designees) which requires a copy of the written designation. It would appear that MMS' purpose is something other than in assisting lessees to comply with FOGRSFA, and a rule which fails to set forth its true purpose would appear to violate the Paperwork Reduction Act and the Administrative Procedure Act.

Perhaps a better course of action would be to withdraw the interim final rule and go back to the drawing board, focusing on the real requirement of FOGRSFA, lessee designations and the effects of duly authorized designee payments and those payments for which designations have not been made.

Respectfully submitted,

GW Butler III

George W. Butler, III

Attachment